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September 13, 2016

VIA ECF

Magistrate Judge Ronald L. Ellis
United States District Court
Southern District of New York
500 Pearl St.
New York, NY 10007-1312

Re: *George Packard, et al., v. City of New York, et al.*, No. 1:15-cv-7130-AT

Dear Judge Ellis:

Pursuant to Your Honor's Individual Rules of Practice in Civil Cases § 1(A) and 2(A), plaintiffs request a pre-motion conference or a briefing schedule to request a lift of the stay of discovery and to determine how this matter will proceed.

Per the Order entered in this matter on August 31, 2016 (Dkt. 47), this action has been referred to Your Honor for all general pretrial matters, with what appears to be the exception of dispositive pretrial motions. As this case is currently stayed pending the resolution of the motion to dismiss (Dkt. 44), plaintiffs seek a schedule to brief the lift of the discovery stay pending the resolution of the motion to dismiss.

This litigation was filed on September 10, 2015, and service was effectuated on all parties on or before September 24, 2015. On October 13, 2015, defendants requested an extension of time to answer, on consent, and the time to answer was extended to December 14, 2015. (Dkt. 24). On December 14, 2015, defendants requested a second extension of time to answer, not on consent, and the request was granted providing until January 14, 2016 to answer the complaint. (Dkt. 26).

On January 14, 2016, defendants filed a pre-motion letter seeking a Rule 12 motion schedule. (Dkt. 27). On January 21, 2016, all parties attended an initial conference, wherein defendants requested a stay of discovery pending their Rule 12 motion. The request for a stay was denied by Judge Torres and the Court entered a civil case management plan. (Dkt. 31).

On February 5, 2016, defendants sought yet another extension, this time to file the moving papers for their Rule 12 motion, and this request was denied. (Dkt. 36). On February 16, 2016, defendants sought a reconsideration of the request to stay discovery pending their Rule 12 motion. (Dkt. 38). In response, plaintiffs filed a short letter and argued that the request was procedurally inappropriate and requested an opportunity to brief the issue if the Court wanted to consider the defendants' request. (Dkt. 39). On February 23, 2016, the Court instead granted defendants' second request for a stay of discovery. (Dkt. 44). On March 31, 2016, defendants' Rule 12 motion was fully briefed and submitted.

On August 31, 2016, Judge Laura Schofield, on behalf of Judge Analise Torres, referred this matter to Your Honor for pretrial matters. (Dkt. 47). As the only pending pretrial matter is the motion to dismiss, and since plaintiffs have uncovered additional evidence in support of their claims, plaintiffs respectfully request the opportunity to brief the lifting of the discovery stay allowing this matter to proceed into discovery while awaiting a decision on the Rule 12 motion.

/s/ Jeffrey G. Smith
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Respectfully submitted,

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